



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,848	09/12/2003	Andrew W. Moehlenbrock	031456/259348	8549
826	7590	04/26/2006		
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000				EXAMINER AUGHENBAUGH, WALTER
				ART UNIT 1772
				PAPER NUMBER

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.	10/661,848	Applicant(s) MOEHLENBROCK ET AL.
Examiner	Art Unit 1772	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 12 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
- (b)  They raise the issue of new matter (see NOTE below);
- (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see continuation sheet. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-17.

Claim(s) withdrawn from consideration: none.

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_

13.  Other: \_\_\_\_\_

## ADVISORY ACTION

### *Acknowledgement of Applicant's Amendments*

1. The After Final Amendment filed April 12, 2006 has not been entered because the amendment in claim 10 raises new issues that would require further consideration and/or search. None of the claims in any of the submissions filed prior to the After Final Amendment filed April 12, 2006 require that the center layer as claimed in claim 10 comprises a heat sealable composition comprising at least one of the materials in the list of materials that was added to claim 10 in the After Final Amendment filed April 12, 2006, so the requirement that the center layer comprises at least one of those materials is a new issue that requires further consideration and/or search.
2. Claim 11 is improperly labeled: claim 11 should be labeled with the "(Previously Presented)" identifier.

### *Response to Arguments*

3. Applicant's arguments presented on pages 5-8 of the After Final Amdt. regarding the 35 U.S.C. 103 rejections of claims 1-17 have been fully considered but are not persuasive.

Applicant argues that Forte does not teach that the outer layers are formed of any of the materials claimed in claim 7, but Forte teaches that the heat sealable composition of the outer layers comprises linear low density polyethylene (a polyolefin, and an ethylene/alpha olefin copolymer, col. 7, lines 1-18), so Forte does teach that the outer layers comprise a polyolefin and an ethylene/alpha olefin copolymer.

Applicant incorrectly states that "Forte teaches that the outer "monolithic" layers C of his film must be a *hydrophilic* polymeric resin (col. 6, lines 45-47)" at the top of page 6 of the After

Final Amdt. Forte only teaches that “[t]he outer monolithic layers comprise a hydrophilic polymeric resin” at col. 6, lines 45-47, not that the outer monolithic layers are limited to consisting of a hydrophilic polymeric resin, as Applicant seems to argue.

Applicant argues that “Forte’s “C” layers are not used as “heat-sealable” layers”, but Applicant’s claims do not require that the outer layers are heat-sealable layers. Recitation that a layer is “formed from heat sealable composition” is not a recitation that the layer is heat sealable.

Applicant’s argument that “Forte’s disclosure actually teaches away from a multilayer film as claimed, having heat-sealable outer layers comprising at least one of polyolefin...” is moot and incorrect. The argument is moot because Applicant’s claims do not require “heat-sealable outer layers”. The argument is incorrect because Forte teaches that the heat sealable composition of the outer layers comprises linear low density polyethylene (a polyolefin, and an ethylene/alpha olefin copolymer, col. 7, lines 1-18), so Forte does teach that the outer layers comprise a polyolefin and an ethylene/alpha olefin copolymer and therefore does not teach away from an outer layer comprising a polyolefin (or from an outer layer comprising an ethylene/alpha olefin copolymer).

Applicant states “the[] claimed polymers are not hydrophilic” on page 7 of the After Final Amdt., but states that the claimed polymers “are not particularly hydrophilic” on page 6. A statement that a polymer is “not particularly hydrophilic” is a statement that the polymer has some degree of hydrophilicity. Applicant’s statement on page 7 therefore contradicts Applicant’s statement on page 6. Furthermore, Applicant’s statements that the claimed polymers are “not particularly hydrophilic” and “not hydrophilic” are not supported by the chart presented on page 7 since Applicant has not provided evidence that establishes percent water absorption of a

polymer as an indicator of the degree of hydrophilicity of that polymer. Applicant has not included all of the claimed materials in the chart on page 7. The scope of "polyolefin" is not limited to LDPE, HDPE and polypropylene, the three polyolefins listed in the chart. LLDPE, which is taught by Forte, is not included in the chart. Applicant has not explained what "EMA" in the chart stands for: ethylene methyl acrylate or ethylene methyl acid. Ethylene butyl acrylate is not included in the chart. The term "ionomer" is not limited to a single composition.

Applicant incorrectly states that "Forte specifically describes that the breathability he seeks for his film requires the ability to pass water vapor and oxygen at moderate to high transmission rates (col. 1, lines 16-20)." Forte only teaches that water vapor and oxygen are "[t]he gasses most commonly used to demonstrate a film's breathability" at col. 1, lines 16-20; there is no requirement at col. 1, lines 16-20 that Forte requires that both water vapor and oxygen must be "pass[ed]" at moderate to high transmission rates. Therefore, one of ordinary skill in the art would have recognized to have used a silicone-coated microporous film as the intermediate microporous layer of the water vapor permeable multilayer film of Forte (col. 1, lines 9-12 and col. 3, lines 24-28 and 39-47) since silicone-coated microporous film is well known to be a water vapor permeable microporous film as taught by Antoon, Jr.

### *Conclusion*

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh  
04/24/06

WBA

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER

1772

4/24/06